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**UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

IN RE:

DELPHI CORPORATION, et al.,

Debtors.

PROCEEDINGS IN CHAPTER 11

Case No. 05-44481 (RDD)

(Jointly Administered)

**CREDITOR SAP AMERICA, INC.'S OBJECTION TO DEBTORS' NOTICE
OF ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACT
OR UNEXPIRED LEASE IN CONNECTION WITH THE
MOTION TO APPROVE THE SALE OF CERTAIN ASSETS AT AUCTION**

Creditor, SAP America, Inc. ("SAP"), hereby objects to the assumption and assignment of any executory contract to which it is a party in connection with the Debtors' motion to approve the Sale of Certain Assets at Auction (the "Motion"). The grounds for SAP's objection to the Debtors' Motion are set forth below.

1. On or about June 18, 1999, Delphi Automotive Systems Corporation (the “Debtor in Possession”) and SAP entered into a certain agreement entitled “SAP America, Inc. R/3 Software End-User License Agreement.” That agreement and any related agreements, appendices and amendments are referred to here as the “License Agreement.”

2. Pursuant to the terms and conditions of the License Agreement, SAP granted Delphi Automotive Systems Corporation a non-exclusive license, which included the right to use the Software (all capitalized terms are used as defined in the License Agreement).

3. No rights of ownership in the Software were transferred to Delphi Automotive Systems Corporation or its Affiliates under the License Agreement. SAP retains ownership of the Software. In re Patient Education Media, Inc., 210 B.R. 237 (Bankr. S.D.N.Y. 1997).

4. The Software licensed to Delphi Automotive Systems Corporation pursuant to the terms of the License Agreement is copyrighted pursuant to the copyright laws of the United States.

5. The License Agreement is an executory contract subject to the provisions of Section 365 of the Bankruptcy Code. In re Patient Education Media, Inc., 210 B.R. 237, 241 (Bankr. S.D.N.Y. 1997).

6. The Debtor in Possession may not assume or assign the License Agreement if applicable non-bankruptcy law excuses SAP from accepting performance from or rendering performance to an entity other than the Debtor and SAP does not consent to the assumption and assignment. 11 U.S.C. § 365(c)(1). In re Catapult Entertainment, Inc., 165 F.3d 747, 749 (9th Cir. 1999); In re West, 852 F.2d 79, 83-84 (3d Cir. 1988).

7. Federal copyright law, which is designed to protect the limited monopoly of copyright owners by granting the owner of the copyright the exclusive right to exploit the copyrighted work and by restricting the unauthorized use of the copyright, constitutes applicable non-bankruptcy law which prevents a debtor from assigning the License Agreement without SAP's consent. In re Patient Education Media, Inc., 210 B.R. 237, 242 (Bankr. S.D.N.Y. 1997).

8. Federal copyright law provides a bright line prohibition against the transfer of copyright license rights and is applicable non-bankruptcy law which excuses SAP from accepting performance from or rendering performance to a hypothetical third party. SQL Solutions, Inc. v. Oracle Corporation, No. C-91-1079 MHP, 1991 U.S. Dist. LEXIS 21097 (N.D. Cal. Dec. 18, 1991); Harris v. Emus Records, 734 F.2d 1329 (9th Cir. 1984); and In re Catapult, 165 F.3d. 747, 750 (9th Cir. 1999).

9. The Debtor in Possession seeks the Court's approval of the sale of substantially all assets of MobileAria, Inc. to the successful bidder at an auction to be held on July 6, 2006 (the "Purchaser"), and the approval of the assumption and assignment of certain executory contracts to the Purchaser.

10. Pursuant to the terms and conditions of the License Agreement, certain Affiliates, including MobileAria, Inc., may be permitted to use the SAP Software.

11. It is unclear from the pleadings submitted and from the Asset Purchase Agreement whether MobileAria, Inc. seeks to assume and assign the SAP License Agreement or whether MobileAria, Inc. intends to sell any computer hardware which might contain the SAP Software because there are no schedules attached.

12. To the extent MobileAria, Inc. seeks to assume and assign the License Agreement or seeks to sell any computer hardware which might contain the SAP Software, SAP objects.

13. Pursuant to the terms of the License Agreement and applicable bankruptcy law, the Debtor in Possession is required to obtain SAP's consent to any assumption or assignment of the License Agreement.

14. To date, neither the Debtor in Possession nor MobileAria, Inc. has sought SAP's consents to the assumption or assignment of the License Agreement.

15. SAP does not consent to the assumption and/or assignment of the License Agreement.

16. The bidding process contemplates possible overbidders which are unknown to SAP at this time. There is no notice to SAP of who such overbidders may be, their suitability as potential assignees of the License Agreement, or their creditworthiness as potential licensees of valuable software. SAP is therefore prejudiced in its ability to protect its legitimate interest as the licensor of valuable software.

17. Pre-petition arrears currently exist under the License Agreement in the amount of \$3,928.74 and the Debtor in Possession has not given SAP any assurances that it will pay the arrears.

18. If SAP consents to the assumption and assignment of the License Agreement, it will require payment of an administrative fee for the transfer of the License Agreement.

WHEREFORE, SAP America, Inc. respectfully requests that this Court:

- A) Deny the Debtor in Possession's and MobileAria, Inc.'s request to assume and/or assign the License Agreement between SAP America, Inc. and Delphi Automotive Systems Corporation; and

B) Grant such other relief as it may deem appropriate.

Dated: New York, New York
July 13, 2006

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By: /s/ Charles Palella
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CERTIFICATE OF SERVICE

I, Stephanie Nolan Deviney, Esquire, hereby certify that on July 13, 2006, I caused true and correct copies of the attached Creditor SAP America, Inc.'s Objection to Debtor's Notice of Assumption and Assignment of Executory Contract and Unexpired Lease in Connection with the Motion to Approve the Sale of Certain Assets at Auction to be served upon all parties listed below via overnight mail:

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Dated: July 13, 2006

/s/ Stephanie Nolan Deviney
Stephanie Nolan Deviney